IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.28422 of 2006
& M.P.Nos.1 to 3 of 2006

Tamilmaran ... Petitioner

Vs.

State Rep. By
Inspector of Police,
Paravakottai Police Station,
Mannargudi Taluk,
Thiruvarur District.
(Crime No.33 of 1990) ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to the case in C.C.No.1146 of 1997 on the file of the Judicial Magistrate No.II, Mannargudi, and quash the same.

For Petitioner : Mr.S.Shanmugavelayutham,
Senior counsel for
M/s.P.K.Rajagopal

For Respondent : Mr.P.Kumaresan
Additional Public Prosecutor

O R D E R

Mr.S.Shanmugavelayutham, learned senior counsel for the petitioner submits that the petitioner has come forward with this petition seeking the relief of quashing the proceedings pending in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate No.II, Mannargudi, Thiruvarur District.

2. The learned senior counsel for the petitioner submitted that the petitioner is facing the trial for the offences under Sections 326, 447 and 427 I.P.C. It is also submitted by the learned senior counsel that the petitioner was originally arrayed as A-5 out of five accused and as the petitioner was away at Singapore, the case was split up and proceeded against the remaining accused, viz., A-1 to A-4 and ultimately ended in acquittal. The learned senior counsel contended that witnesses including the defacto complainant in this case turned hostile and there is absolutely no evidence available, as adduced by the prosecution, to

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implicate anyone of the accused and as such the learned trial Judge acquitted all the accused 1 to 4. It is submitted by the learned senior counsel that thereafter on return from Singapore, the petitioner surrendered and also filed a petition to recall the Non-Bailable Warrant and thereafter his case was taken separately in C.C.No.1146 of 1997 and the said case is pending against the petitioner herein. The learned Senior counsel also contended that in view of the acquittal of the other accused, viz., accused 1 to 4, and in view of the admitted fact that the defacto complainant himself turned hostile and the occurrence itself is taken place as early as in the year 1990, no useful purpose would be served in proceeding against the petitioner herein by conducting trial.

3. The learned senior counsel placed reliance on the following two decisions :

i.Sunil Kumar v. State reported in 2000 (1) Crimes 73 ;
ii.Mohammed Ilias v. State of Karnataka reported in 2001 (4) Crimes 417 ;

4. Heard the learned Additional Public Prosecutor on the submissions made by the learned senior counsel. It is admitted by the learned Additional Public Prosecutor that the other accused, viz., A-1 to A-4 have been tried by the learned trial Judge and ultimately the case ended in acquittal disbelieving the entire prosecution case. It is also submitted by the learned Additional Public Prosecutor that as the petitioner was absconding the case against the petitioner is split up and it is numbered as C.C.No.1146 of 1997 and the same is pending for trial.

5. I have carefully considered the submissions of both sides and also perused the entire materials available on record.

6. It is not disputed that the co-accused viz., A-1 to A-4 have been already tried by the learned trial Judge and the case ultimately ended in acquittal as the learned trial Judge disbelieved the entire prosecution case. As far as this petitioner is concerned, he has been originally arrayed as A-5 and as he was absconding, Non-Bailable Warrant was issued and pending and as the petitioner ultimately returned to India from Singapore, he has voluntarily surrendered before the learned trial Judge and the Non-Bailable Warrant is also recalled by the learned Magistrate and as such the petitioner is facing the trial for the alleged offences under Sections 326, 447 and 427 I.P.C. before the learned trial Judge.

7. This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on

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record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in Sunil Kumar v. State reported in 2000 (1) Crimes 73 wherein it is held as follows :

> "3. The question thus is as to whether in the face of the judgement of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In Sat Kumar v. State of Haryana (AIR 1974 SC 294), it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also Har Prasad v. State of Madhya Pradesh (AIR 1971 SC 1450), Makan Jivan v. State of Gujarat (AIR 1971 SC 1797), Mohd. Moin Uddin V. State of Maharashtra (1971 S.C.C. (Cri.) 617). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence.
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> 4. On perusal of the judgment of acquittal dated 19-1-1998, it appears that the decased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses, namely, Karan Singh (PW 2) and Smt.Asha Rani (PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/A) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eye-witnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself."

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8. In yet another decision, placed reliance by the learned senior counsel, in Mohammed Ilias v. State of Karnataka reported in 2001 (4) Crimes 417, the Karnataka High Court taken a similar view following the decision of Delhi High Court, cited supra.

9. Therefore, the above well settled principle of law laid down in the decisions cited supra, is squarely applicable to the facts of the instant case as in this case also admittedly the other accused, viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed.

10. This petition is ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.II,
   Mannargudi.

2. -Do-Thro' The Chief Judicial Magistrate,
   Nagapattinam.

3. The Inspector of Police,
   Paravakottai Police Station,
   Mannargudi Taluk,
   Thiruvarur District.

4. The Public Prosecutor ,
   Madras High Court, Madras.

2 cc To Mr.P.K.Rajagopal, Advocate, SR.20883.

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PV(CO)
RVL 19.04.2007

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